

May 13, 2016

Fax: 416-314-8452

Application Assessment Officer
Ministry of the Environment and Climate Change
Operations Division
Environmental Approvals Access &
Service Integration Branch
Application Verification Unit
135 St. Clair Avenue West, Floor 1
Toronto, ON M4V 1P5

E-mail: tina.dufresne@ontario.ca

Ms. Tina Dufresne, District Manager
Halton-Peel District Office, Central Region
4145 North Service Road, Suite 300
Burlington, ON L7L 6A3

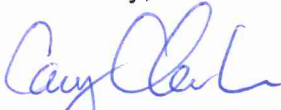
Dear Sir/Madam:

Subject: EBR Registry Number: 012-6693
Ministry Registry Number: 1720-A59NX4
Proponent: Burlington Airpark Inc.
Instrument Type: Environmental Compliance Approval –
EPA Part II.1 – sewage
Location: 5342 Bell School Line, Burlington, ON

Please find attached comments from the Corporation of the City of Burlington in respect of the above noted application.

If you require any further information, please do not hesitate to contact me.

Yours truly,



Cary Clark
Manager of Development & Stormwater Engineering

Attachment

May 13, 2016

Burlington Executive Airport

EBR Comments from the Corporation of the City of Burlington

EBR Registry Number: 012-6693

Proponent: Burlington Airpark Inc.
3647 Dixie Road
Mississauga Ontario
Canada L4Y 2B3

Ministry Reference Number:
1720-A59NX4

Ministry:
Ministry of the Environment and Climate Change

Instrument Type: Environmental Compliance
Approval (project type: sewage) - EPA Part II.1-
sewage

Date Proposal loaded to the Registry:
March 30, 2016

This proposal is for a new Environmental Compliance Approval related to sewage works related to the collection, transmission and disposal of stormwater for the Burlington Executive Airpark located at 5342 Bell School Line in the City of Burlington, Regional Municipality of Halton, Ontario.

The proposed stormwater management works consists of storm sewers and two oil/grit separator units with discharge to Bronte Creek.

Location(s) Related to this Instrument:

5432 Bell School Line
Burlington
Regional Municipality of Halton L9T 2Y1

CITY OF BURLINGTON

The City is very concerned with this application.

The City's concerns arise from its familiarity with this applicant. The City has been in litigation with this Applicant over the past several years over the applicant's deposit of fill at its site.

The City has a site alteration by-law, yet the Applicant refuses to comply with it. The Applicant triggered litigation involving the City on the basis that its status as an Airpark exempts it from City approval. The Applicant lost this litigation in the Ontario Court of Appeal, but has nevertheless refused to comply with the City by-law. The City is thus now in enforcement proceedings against the Applicant over its non-compliance.

The applicant's position with the City raises the question whether there are other aspects of this site which do not comply with existing provincial or municipal laws and do not have required approvals. Concerns include:

1. Provincial laws and regulations prohibiting the illegal deposit of waste and the related requirement for an environmental compliance approval to deal with waste;
2. Provincial laws and regulations governing activities under the jurisdiction of conservation authorities and the requirements for conservation authority approval for activities within regulatory flood lines.

It is also evident to the City that the present request for Ministry approval does not cover all relevant works at the site. The Applicant appears to have constructed works without any approval to do so. It is now seeking your approval for additional works, but not all works.

The City asks the Director to refuse to issue any Environmental Compliance Approval (ECA) to this Applicant until the Director undertakes appropriate investigation into the following matters:

1. Is the Applicant in breach of provincial law for the deposit of materials onto a site without an approval as a waste disposal site?
2. Is the Applicant in breach of provincial law for constructing and operating sewage works without provincial approval?
3. Is the proposal subject to additional Conservation Halton applicable laws and approvals or otherwise to the satisfaction of Conservation Halton?

Once the Director is satisfied that the Applicant is in compliance with all applicable laws, the City requests that the Director address the matters which are incomplete in the current application.

These include:

- failure to properly identify the Applicant's legal name, being Burlington Airpark Inc.;
- failure to describe all lands subject to the proposed sewage works;
- failure to describe all works related to the collection and treatment of sewage, namely stormwater, at the applicant's lands;
- failure to address application requirements that the Applicant address the City's position on the proposal and obtain assurance from the City that the proposal does not contravene any municipal by-laws or other requirements; and

- failure to address numerous environmental issues raised by the City which has triggered the City's litigation over non-compliance.

The City provides additional details below.

SUPPORTING DETAILS ON THE CITY OF BURLINGTON'S POSITION

1. Inaccurate Property Description and Project Description

5342 Bell School Line is only one of three adjacent properties having the same ownership. The Study Area shown in the report, "Burlington Executive Airpark: Preliminary Stormwater Management Report" (October 2015), Figure 1.0, p.2, shows all three properties. The other parcels are 5260 Bell School Line and 5351 Appleby Line. The 5342 and 5260 Bell School Line properties have received a zoning exception to permit "airport" use. The Appleby Line property has no exceptions to the Rural Agriculture (RA) zone.

The application for approval should apply to all of the lands described in the Study Area. In addition, the application should properly and consistently identify the three properties at issue, being 5342 Bell School Line, 5260 Bell School Line, and 5351 Appleby Line.

2. Existing Unapproved Stormwater Works

The Llewellyn Report relies on an unusual distinction between what it calls, "Pre-Construction Conditions" and "Post-Construction Conditions." According to this distinction, "Pre-Construction" covers the period prior to 2008, and "Post-Construction" covers the period from 2008 to October 2015. The City is not aware of any approval for any activities occurring after 2008.

Section 53(1) of the OWRA provides *that*

subject to s. 47.3 of the EPA, no person shall use, operate, establish, alter, extend or replace new or existing sewage works except under and in accordance with an environmental compliance approval

It is our understanding that the Airpark has no previous approvals from MOECC (Certificates of Approval or ECAs) for the storm sewers and outfalls on their site. We believe that the Airpark requires ECAs for all storm sewers, oil and grit separators, outfalls and appurtenances that currently exist and are proposed on the Airpark site.

3. Additional Works Not in Application

The proposed sewage works identified in the application require clarification.

The Project Description Executive Summary contained in the Application identifies that:

A tributary of Bronte Creek bisects the site....Filling operations have taken place on the west side of the creek and a culvert crossing installed to allow vehicle access over the creek. Under present conditions, drainage from the

east side of the property is via sheet flow or storm sewer to the creek. Drainage from the west side of the property is via overland sheet flow to the creek.

The proposed SWM strategy for the current site proposes the installation of two (2) Hydroguard HG-12 oil/grit separators at Outlets 1 and 4.

This description incorrectly identifies drainage and filling operations that currently exist on site. Filling operations have also taken place on the east side of the creek, and drainage on the west side of the property is also via storm sewer to the creek.

The EBR posting indicates that, "The proposed stormwater management works consists of storm sewers and two oil/grit separator units with discharge to Bronte Creek". However, the application itself and the October 2015 technical report in support of the application prepared by S. Llewellyn & Associates Limited deal only with the oil/grit separators and not the storm sewer extensions that have already been undertaken.

4. Failure to Obtain Municipal Sign-off

Section 1.5 of the ECA application form requires confirmation of municipal sign-off. The City would be the applicable municipality. The Applicant provided the City with a copy of the preliminary storm water management report after the Application was submitted. The City has not provided any sign-off to the Application prior to its submission. As such, there has been no meaningful consultation between the Applicant and the City on the matter.

The City observes that the site is located within the Province's permanent Greenbelt and subject to the Greenbelt Plan (2005). The airport use is not consistent with the vision or goals of this plan. Instead, the site relies on the "Existing Use" policies of this Plan. Given this status as an exception to the Plan, an important question is whether in the absence of a detailed aeronautic development plan and specific timetable, the municipality, as a regulator, can say with any certainty the Application is consistent with the Greenbelt Plan, municipal by-laws, or other planning instruments. Therefore, the City cannot provide a declaration as required by section 1.5 of the Application.

The City requests that the Director exercise the power set out in section 20.9 of the *Environmental Protection Act*. It provides as follows:

The Director may require a person who submits an application under this Part to consult with the persons specified by the Director in a manner specified by the Director before the Director makes a decision in respect of the application.

5. Need for Regulatory Consultation with Conservation Halton

The City requests that the Director exercise the discretion found in s.20.9 to also require consultation with (1) Conservation Halton, and (2) area residents that are or may be affected by the sewage works.

The technical information that will be generated through a combined municipal process (i.e. the site alteration permit and municipal consultation), will be instructive for the Director in deciding

whether or not to exercise its discretion pursuant to section 20.15(1) of the *Environmental Protection Act* to require the Environmental Review Tribunal to hold a hearing before the Director makes a decision on the application for ECA. A hearing may in fact be required where technical evidence either in support of the application or against the application is either insufficient, or conflicting.

6. Failure to comply with City Site Alteration By-law

The City submits that illegal fill activity has taken place on both the east and west sides of the creek contrary to the City's site alteration by-laws. The City and the Applicant have been in litigation for years arising from this illegal fill operation taking place at the Airpark. The Ontario Court of Appeal has determined that the City has the legal jurisdiction to regulate fill on the Airpark site pursuant to its site alteration by-law.

7. Environmental Issues Not Addressed

The City has identified the following concerns with respect to the fill operations that have taken place at the Airpark:

- adverse erosion and environmental impacts on and off-site;
- blockage of a swale, ditch or watercourse;
- siltation in a watercourse, wetland or storm sewer;
- transportation of silt to adjacent, neighbouring or downstream properties;
- pollution of a watercourse;
- flooding or ponding of adjacent lands;
- flooding or ponding caused by a watercourse overflowing its banks;
- detrimental effect on the quality or quantity of water in wells.

Despite the ruling of the Ontario Court of Appeal in favour of the City position that its site alteration by-law applies to this site, the Applicant continues to contravene the City's by-laws. It has also failed to submit the required application for site alteration permit that would allow the City to mitigate the issues of concern identified above. The City and the Airpark were again in court on November 10, 2015 with the City seeking to have the Airpark remove the fill, or in the alternative, file the requisite application for site alteration permit.

To date there has not been a decision from the court.

This pending decision is important. Among other things, the decision may result in the removal of some or all imported soil from the Airpark site. This could result in the removal or reconfiguration of storm sewers and outfalls on the site.

8. Failure to Address Implications of Sewage Works Already Installed Without ECA or Certificate of Approval

Portions of the storm sewers were installed during the filling operations. An ECA should not be issued by MOECC until the Site Alteration permit application process has been completed to the satisfaction of the City of Burlington (including City and CH permitting). The City of Burlington issued an Order to Comply and Violation Notice to Airpark under its Site Alteration By-law in May 2013.

9. Impacts on Neighbouring Lands

The extension of these sewage works without having obtained an ECA (or CofA) is having adverse impacts on neighbouring land owners. Prior to the start of filling in 2008, farm fields existed to the west of the "North-South runway". Stormwater drainage occurred by sheet flow and along farm field swales. With the illegal installation of storm sewers, this flow pattern was altered and replaced by concentrated flows discharging off site. This is significantly different from pre-fill conditions and has negatively impacted adjacent property owners.

Equally, the discharge from Outlet 4 has resulted in more concentrated flows to this adjacent property. The adjacent property is regularly saturated, resulting in trees and vegetation dying.

Additionally, Outlet 3 also has resulted in new concentrated flows to the adjacent property to the west. This has resulted in regular saturation of the farm field, making it difficult for the farmer to access the field for farming activities. This new concentrated flow has also resulted in increased flows to the property south of Outlet 3.

The filling operations and lack of erosion and sediment control have also caused significant transport of silt into the watercourse downstream of Outlet 5. This has affected the Airpark property and the adjacent property to the south.

10. Ministry Power to Investigate

The City asks the Director to exercise the powers provided under s.53(3) of the OWRA. Where sewage works have been undertaken without the ECA, s.53(3) of the OWRA provides:

a Director may order the person ... to afford at their own expense such facilities as the Director considers necessary for the investigation of the works and the location of the discharge of effluent and may direct such changes to be made in the location of the discharge of effluent and *in the works as the Director considers necessary, and any changes directed by the Director to be made in the works shall be carried out by the person...*

11. Technical Comments on the Preliminary Stormwater Management Report

- a) The SWM report should not be "Preliminary". A "Final" report should be prepared.
- b) Storm sewer design sheets and storm outfall details for all existing outlets have not been adequately provided. For example:

- i. Predevelopment and post-development flows have not been provided.
 - ii. The pipe flows and pipe capacities have not been provided.
 - iii. Details of how the outfalls will be modified, such that no adverse impacts will occur on adjacent lands, have not been provided.
- c) The fill placed on the site generally appears to be highly impervious. The City is concerned that the runoff coefficient of the compacted fill is higher than the pre-filling runoff coefficient of the pre-existing farm fields. This has not been addressed in the SWM report.
 - d) Storm Water Management (SWM) quantity controls are required to address the impacts of increased runoff to adjacent properties, as mentioned in comment #8 above.
 - e) The Airpark states that topsoil and seeding will be placed to cover the existing fill. It is the City's position that the topsoil and seeding operation will not result in similar runoff conditions to predevelopment conditions. The soil, subsoil strata and perviousness properties appear to have been significantly changed.
 - f) SWM quality controls should also be required in drainage areas 203, 205, 208, 209 and 211 where runways and taxiways are located. These facilities have the potential for sand, salt, fuel spills, oil spills and deicing fluids to be present on their paved surfaces.
 - g) Drainage area 211 does not have a stormwater discharge location identified. This area drains to adjacent properties uncontrolled.
 - h) The watercourse in drainage area 205 is regulated by Conservation Halton. The watercourse was filled in for the purpose of building an access road. A culvert was installed to convey the watercourse flow. Conservation Halton has issued a Violation Notice and Order for this location.
 - i) The filling operations and lack of erosion and sediment control have caused significant transport of silt into the watercourse (downstream of Outlet 5) on both the Airpark property and the adjacent property to the south. This has adversely affected the adjacent property.
 - j) The concentrated flow from Outlet 4 has caused the adjacent property to receive more concentrated stormwater flows than in predevelopment conditions. The adjacent property is regularly saturated, with trees and vegetation dying.
 - k) Outlet 3 also has resulted in concentrated flows being directed to the adjacent property to the west, where in predevelopment conditions this was not the case. As a result, this section of the farm field is regularly saturated and has caused the farmer difficulty in accessing the field for farming activities. This also results in increased flows being directed to the property to the south of Outlet 3.
 - l) Future SWM facilities must be designed and constructed as the Airpark develops in the future to control future stormwater flows to pre-existing (prior to 2008) conditions.

- m) Changes to surface drainage patterns have occurred. Any changes to watershed drainage areas that result in impacts to Conservation Halton regulated lands require Conservation Authority permits. MOECC approvals should not be issued prior to permits issued by Conservation Halton.
- n) Appropriate sedimentation and erosion control measures must be in place until site restoration is complete.
- o) A proposed topsoil and seeding schedule for site restoration has not been provided. The proposed depth of topsoil has not been provided.
- p) Soil contamination mitigation actions are required on the Airpark site, according to Airpark's "Site Specific Risk Assessment" by Pinchin Environmental, dated June 17, 2015. These mitigation actions and the proposed methods should be considered in the application review. The methods to be used could impact the stormwater drainage and storm sewer system on the site.

The City of Burlington recommends that Airpark be required to submit an application for a Site Alteration Permit for the entire Airpark site and to acquire a Site Alteration Permit, prior to the MOECC considering an application for the issuance of an ECA.